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MAR 21 2006

OFFICE OF PETITIONS

In re Application of
Kollar
Application No. 08/567,564
Filing Date: December 5, 1995
For: PREPARATION OF DIALKYLY
PEROXIDES

: Decision on Petition for
: Patent Term Extension

The above-identified application has been forwarded to the undersigned for consideration on the "Request for Reconsideration of Patent Term Adjustment," which was received on May 16, 2005, requesting a patent term extension of 5 years, which is being treated as a petition under 37 CFR 1.181. See 35 U.S.C. § 154(b)¹ and 37 C.F.R. § 1.701.

The petition under 37 CFR 1.181 is granted.

Petitioner notes that the Notice of Allowance dated March 3, 2005, in the above-identified application indicated a 609-day patent term extension. The above-identified application was filed on December 5, 1995 and a Notice of Appeal was filed on May 8, 1998. On June 20, 2002, the application was remanded to the examiner by a panel of the Board of Patent Appeals and Interferences after a remand from the Court of Appeals from the Federal Circuit. On July 31, 2002, interference was declared and a final decision was mailed on July 30, 2004. Petitioner argues that because the pendency will be greater than 9 and half years, there should be five (5) years of patent term extension under 35 U.S.C. 154 and 37 CFR 1.701.

35 U.S.C. § 154(b) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000, and, as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113, for those delays and others in applications filed on or after May 29, 2000.

A Notice of Appeal was filed in the above-identified application on May 8, 1998. On June 20, 2002, a panel of the Board of Patent Appeals and Interferences (BPAI) remanded the application to the

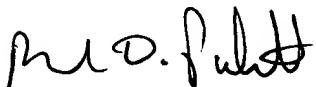
¹35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000). Since this amendment is effective May 29, 2000 and applies to applications filed on or after that date, the prior patent term adjustment provisions of 35 U.S.C. § 154 continue to apply to the above-identified application.

examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a remand by a panel of the BPAI to the Examiner, the patent to issue from the application is entitled to an extension of the patent term.² The period of delay in the above-identified application is the period beginning on May 8, 1998, the date that the Notice of Appeal was filed and ending on June 20, 2002, the date of the remand by a panel of the BPAI, which is a final decision in favor of the applicant. Three years after the earliest effective filing date of the application is December 5, 1998. Accordingly, the period of extension is required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the period of extension is 1,294 days, the period from December 5, 1996 to June 20, 2002 including the beginning and end dates.

A declaration of interference was made in the above-identified application on July 31, 2002. 37 CFR 1.701(c)(1)(i) states that the period of delay runs from the declaration of interference to the date that the interference was terminated. On March 30, 2004, the Board of Appeals and Interferences terminated the interference proceedings with an adverse decision favorable to applicants. Therefore, applicants are entitled to a patent term extension for the period of the delay from the declaration of interference, July 31, 2002, to the decision favorable to applicants, March 30, 2004. This period of delay is correctly indicated as 609 days on the Notice of Allowance and Issue Fee Due, mailed on March 3, 2005.

After mailing of this decision, the above-identified application will be forwarded to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by five years.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

²Revision of Patent Term Extension and Patent Term Adjustment Provisions, 78 FR 21704, 21705 (April 22, 2004), 1282 Off. Gaz. Pat. Office Notices 100 (May 18, 2004) (final rule).